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Résumé de l'article

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Hugh M. Grant

Errol Black and Jim Silver have argued that despite its limitations, Final Offer Selection (FOS) has had a positive impact upon industrial relations in Manitoba[1]. FOS, they suggest, is an important «safety valve» for «smaller, weaker bargaining units» seeking to pre-empt a protracted strike/lockout situation. Since the procedure can only be invoked upon the consent of a majority of the union's membership, it provides them with «an alternative to strike action, which too often has proved suicidal» (p. 155). Given the increasing vulnerability of smaller bargaining units in the rapidly growing service sector, this is said to be an important gain for the trade union movement which does not unduly infringing upon existing collective bargaining procedures. Despite its flaws, therefore, the authors are opposed to the Conservative government's intention to repeal the legislation. As they argue: «The need at which FOS is directed is real, and crucially important for the future of the labour movement» (p. 155).

These conclusions are problematic for four reasons, three which are empirical and one which is more fundamental. First, Black and Silver correctly observe that 34 of the 42 applications to use FOS have originated with the targeted group of «smaller, weaker bargaining units» (p. 157); however, they ignore the overwhelming fact that 22 of these applications came from the United Food and Commercial Workers/Manitoba Food and Commercial Workers (UFCW/MFCW), and 10 from the International Union of Operating Engineers (IUOE). FOS has not been widely embraced by trade unions representing weaker bargaining units; instead, its use has largely been restricted to two unions with a particular commitment to this form of dispute resolution[2].

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1 Errol BLACK and Jim SILVER, «Contradictions and Limitations of Final Offer Selection: The Manitoba Experience», *Relations Industrielles/Industrial Relations,* vol. 45, no 1, pp. 146-165

2 At the time of its introduction, the legislation was widely interpreted as having been written at the behest of Bernard Christophe, President of the MFCW; as such, it was branded by the then-Conservative Opposition as the «bail-out Bernie bill» (Manitoba, Legislative Assembly, *Debates,* vol. 35, p. 3325). The IUOE is the successor to the union which pioneered the use of FOS in North America, first introduced in the collective agreement between Ontario Hydro and its Operating Engineers in 1963. On the early use of FOS by the IUOE, see Val SCOTT, «New Conditions Demand New Concepts», *Canadian Personnel and Industrial Relations Journal,* 1973, vol. 20; «An Illustration of How FOS Works», *Canadian Personnel and Industrial Relations Journal,* 1973, vol. 20; and Frances BAIRSTOW, «Final Position Arbitration», *Canadian Public Administration,* 1975, vol. 18, pp. 55-64.

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Second, the ambivalent reception accorded FOS by the trade union movement has not been without good reason. While Black and Silver tend to exalt FOS as a panacea for all problems faced by «smaller bargaining units», a more cautious reading of the available data indicates that this is far from the case. During 1988, five FOS decisions were rendered by a selector in Manitoba, three in favour of the union's final offer and two for the employer's. Noteworthy is the selector's award in the dispute between Domgroup Ltd. and the MFCW. Having been forced to accept wage concessions of over $3.00 per hour in two previous contracts, the union argued that it was incumbent upon the selector to restore a «sense of equity». But for selector Martin Freedman, these wage rollbacks amounted to *prima facie* evidence of the weak bargaining position of the union, a reality which should be reflected in his award. In rendering his decision, he cited Joseph M. Weiler:

> interest arbitration awards should, as far as possible, duplicate the results of free collective bargaining [...] an arbitrator should award something similar to what the parties would likely have agreed to in the normal bargaining context where work stoppages are available weapons to relieve a bargaining impasse[3].

Accepting the employer's argument that he was not to act as «a labour relations Santa Claus», the selector found in favour of the employer's final offer[4]. The upshot is that FOS, like other forms of interest arbitration, is not intended to replace, but rather approximate, the perceived bargaining strengths of the two parties.

Third, the authors present data (Table 1) which indicates that 42 applications were made to invoke the FOS procedure during 1988. On 34 occasions, however, a negotiated settlement was reached prior to the selector's decision, and on 3 other occasions the union voted against using FOS. The inference to be drawn is that FOS has not unduly interfered with ongoing negotiations. Anderson, however, has compellingly argued that «casual observation» of this nature is no substitute for legitimate empirical analysis[5]. What we need to know is whether negotiated settlements would have been reached in the absence of FOS, and no such evidence is provided.

Finally, even accepting for the moment that FOS may be of some short-term, tactical significance for the trade union movement, a larger principle has been all but ignored. Black and Silver, and apparently the Manitoba Federation of Labour, seem to take lightly the principle of free collective bargaining. The fact remains that during the first year of FOS in Manitoba, a union's membership opted to submit a dispute to a selector on 29 occasions and, in doing so, the employer's right to engage in a work stoppage was unilaterally suspended. It may be argued that the current structure

3 *Interest Arbitration,* Carswell, 1981, p. 3.

4 Martin FREEDMAN, *Decision of Selector in the Matter of Final Offer Selection pursuant to Section 94.3 of the Labour Relations Act between Domgroup Ltd. and Manitoba Food and Commercial Workers Union, Local 832,* Manitoba Labour Relations Board, October 11, 1988.

5 John C. ANDERSON, «The Impact of Arbitration: A Methodological Assessment», *Industrial Relations,* 1981, vol. 20, pp. 129-148.

of industrial relations is imbalanced in favour of management; but to empower a union's membership to revoke the employer's right to lock-out workers entails a dangerous encroachment upon collective bargaining rights[6]. Given the important struggles by working people to achieve these rights, it is unbecoming of Black and Silver (and the Manitoba Federation of Labour), to treat the principle of free collective bargaining in such a cavalier fashion.

6 Both the Manitoba Organization of Nurses's Associations and the Canadian Union of Public Employees opposed the legislation for this reason (Manitoba, Legislative Assembly, Standing Committee on Industrial Relations, *Hearings: Final Offer Selection,* vol. 35, pp. 23c2, 25c1).